United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

74-1911

In The

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROYAL STEUBING, 231 East Virginia Blvd., Jamestown, New York, CHAUTAUQUA COUNTY ENVIRONMENTAL DEFENSE COUNCIL, JOSEPH CATANIA, Drive-In Motel, Westfield, New York, ROBERT SEINDELL, 19 Chestnut Street, Jamestown, New York, JAMESTOWN AUDUBON SOCIETY, MARTIN OQUIST, Greenhurst, New York, JACK LLOYD, Greenhurst, New York, RICHARD MUDGE, 49 Peleison Street, Jamestown, New York, TROUT UNLIMITED, ALAN REPPENHAGEN, Silver Creek, New York, CHAUTAUQUA COUNTY FEDERATION OF SPORTSMEN, CHARLES MOHNEY, Bemus Point, New York, CHAUTAUQUA LAKE POWER BOAT CLUB,

Plaintiffs-Appellees,

v.

CLAUDE S. BRINEGAR, Secretary of Department of Transportation, 400 7th Street, S. W., Washington, D. C. 20590, RAYMOND T. SCHULER, Commissioner of New York State Department of Transportation, Albany, New York,

Defendants-Appellants.

Appeal from the United States District Court for the Western District of New York

BRIEF OF AMICUS CURIAE
THE ENVIRONMENTAL DEFENSE FUND

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited — Page

Statutes Cited

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Docket No. 74-1911

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for the Western District of New York.

BRIEF OF AMICUS CURIAE

THE ENVIRONMENTAL DEFENSE FUND

PRELIMINARY STATEMENT

This is an appeal by defendants Claude S. Brinegar, Secretary of the Department of Transportation, and Raymond T. Schuler, Commissioner of the New York State Department of Transportation, and by several intervenors from an order entered in the United States District Court for the Western District of New York by the Honorable John T. Curtin preliminarily enjoining defendants from continuing construction of a highway bridge over Chautauqua Lake.

The Environmental Defense Fund ("EDF"), a nationwide non-profit organization of nearly 50,000 persons dedicated to the protection of our environment and the wise use of our natural resources, requested permission to file this brief as amicus curiae because of the importance of both the general principles of law involved in the action and the fate of Chautauqua Lake. Issues have been raised herein concerning the circumstances in which a district court may decline to issue an injunction even where a substantive violation of the National Environmental Policy Act ("NEPA") is shown, and whether a federal agency may escape its obligations under NEPA by resorting to the doctrine of laches. These issues are significant to nearly every suit brought under NEPA. The decision of the Court will make law governing all such suits in this

circuit, and will influence many more cases throughout the country; it will therefore significantly affect efforts to protect our environment.

ISSUE PRESENTED

The District Court did not abuse its discretion by granting a preliminary injunction and refusing to apply the doctrine of laches.

STATEMENT OF FACTS

Plaintiffs below, an ad hoc coalition of individuals and groups interested in preserving the ecology of Chautauqua Lake, brought this suit to enjoin further construction of Section 5C of the proposed Southern Tier Expressway. Section 5C is approximately 2.5 miles long and includes approximately .8 miles of a bridge over Chautauqua Lake. The ground for the action was that defendants had failed to file an Environmental Impact Statement ("EIS") as required by section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), and a similar statement as required by section 4(f) of the Department of Transportation Act, 49 U.S.C. § 1653(f) and 23 U.S.C. § 138.

The action was referred to United States Magistrate Edmund F. Maxwell, who made careful and detailed

findings of fact and law. The case then went to Judge Curtin who, after a further careful analysis, issued the preliminary injunction requested by plaintiffs.

The District Court rejected the defense of laches and concluded that plaintiffs had shown a high probability of success on the merits and that irreparable harm would result from failure to issue the preliminary injunction. The Court adopted the Magistrate's finding of fact that at the time of the hearing, construction of the bridge substructure contract was 3% complete, but that if injunctive relief were delayed until a final determination of the issues

> "the construction will have reached that stage of completion wherein for economic reasons, it would be impossible to turn back or alter the work and thus the environment might be irreparably affected." Magistrate's Report, Civ. 1973-576 at p. 26.

These findings and all other findings of fact of the Magistrate and the District Court are not substantially in dispute and are accepted by EDF.

POINT I
INJUNCTIVE RELIEF WAS PROPER

District Judge Curtin correctly stated the standard for granting a preliminary injunction. There must be proof of irreparable harm to those seeking the injunction and there must be a showing of probable success on the merits. See Gulf & Western Industries, Inc. v. Great Atlantic & Pacific Tea Co., 476 F.2d 687 (2d Cir. 1973). Both requirements have been satisfied in this litigation and the injunction properly issued.

A. Irreparable Injury

Defendants conceded below that no EIS as required by section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C), was filed with respect to the Section 5C bridge construction. Courts have determined that sufficient irreparable harm to justify injunctive relief is demonstrated by a continuing violation of NEPA. See, e.g., Environmental Defense Fund, Inc. v. Tennessee Valley Auth., 468 F.2d 1164, 1184 (6th Cir. 1972). Thus, irreparable harm to plaintiffs may already have been conceded by defendants. Nevertheless, even on the assumption that the irreparable harm standard is not satisfied merely by finding a violation of NEPA, an analysis

of the purposes of the legislation and the role of injunctive relief in environmental cases demonstrates that only where a project is so near completion that no environmental saving would result from restraining construction should an injunction be denied. In this extreme situation, the injury has already been done and thus plaintiffs could not demonstrate irreparable injury if an injunction is not granted. This is certainly not the situation here.

1. Purposes of NEPA. NEPA compels federal agencies and departments to consider environmental values in all decision-making. Agencies must use a "systematic, interdisciplinary approach" to environmental planning and decision-making which might have an impact on the environment. 42 U.S.C. § 4332(2)(A) and 2(B). See generally, Calvert Cliffs' Coord. Com. v. AEC, 449 F.2d 1109, 1112-13 (D.C. Cir. 1971). The Court in Calvert Cliffs' pointed out that NEPA required a balancing of environmental and economic considerations.

The EIS required by section 102(2)(C) of NEPA insures that the balancing process is carried out by requiring officials of the agencies to prepare a "detailed statement" of the impact that an action will have on the environment. The purpose of the statement "is to aid in the

agencies' own decision making process and to advise other interested agencies and the public of the environmental consequences of planned federal action." Calvert Cliffs', supra, 449 F.2d at 1114. This court has determined that the impact statement "is a mandate to consider environmental values 'at every distinctive and comprehensive stage of the [agency's] process.'" Greene County Planning Board v. FPC, 455 F.2d 412, 420 (2d Cir.), cert. denied, 409 U.S. 849 (1972), and that its primary purpose "is to compel federal agencies to give serious weight to environmental factors in making discretionary choices." Monroe County Conservation Council, Inc. v. Volpe, 472 F.2d 693, 697 (2d Cir. 1972). If defendants are permitted to proceed with construction while drafting an impact statement, the impact statement ceases to be a vehicle for "making discretionary choices" and becomes instead a post hoc rationalization for what the agency has already done, or, possibly, an obituary for a precious environmental resource.

Frequent litigation since the passage of NEPA concerning section 102(2)(C) indicates that while federal agencies have not always lived up to the strictures of NEPA, public interest groups are ready to join battle with these

agencies where there are substantive violations of NEPA.* It is submitted that injunctive relief is absolutely necessary if the federal agencies are to be required to comply with NEPA at the behest of these "private attorney generals."**

2. Injunctive Relief. The importance of injunctive relief was succinctly stated by District Judge Blumenfeld in I-291 Why? Association v. Burns, 372 F. Supp. 223 (D. Conn. 1974). There, the construction of a portion of an interstate divided highway through parts of Connecticut was enjoined because of the failure of defendants to prepare an adequate EIS. The court noted that construction was "not anywhere near complete" and granted injunctive relief. In discussing whether the expense incurred by defendants should be a factor in determining whether the injunction should issue, the court stated:

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* See, e.g., Scherr v. Volpe, 466 F.2d 1027 (7th Cir. 1972); Arlington Coalition on Transportation v. Volpe, 458 F.2d 1323 (4th Cir.), cert. denied, 409 U.S. 1000 (1972); Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971).

** In I-291 Why? Association v. Burns, 372 F. Supp. 223 (D. Conn. 1974), the court noted that this circuit has "recognized in NEPA a Congressional mandate" for "scrupulous" decision-making involving environmental impact and has "seen the forcefulness of this mandate as authorizing special judicial solicitude of those who seek pro bono publico to ensure that the government" lives up to NEPA. Id. at 237-38.

> "[I]t is better for this expense to be incurred in serving NEPA than to risk the illegal expenditure, in contravention of NEPA, of much more substantial sums. Moreover, the point of injunctive relief is to preserve realistic options for federal decision makers, including the option of abandonment of the project. Defendants are not entitled to assume that full compliance with NEPA 'will have no effect whatever on the decision whether or not to build.' . . . It is cheaper to halt construction now and proceed later, if this is decided upon, than to continue to construct even more of a project which may ultimately be abandoned and perhaps even dismantled." 372 F. Supp. at 263.

Thus, I-291 Why? Association v. Burns clearly demonstrates that when environmental protection is still possible and where corrective action is not so costly as to be impossible,* the purposes of NEPA are served only where an injunction issues halting construction of a project. See also Greene County Planning Board v. FPC, 455 F.2d 412, 422-23 (2d Cir.), cert. denied, 409 U.S. 849 (1972), ("It is far more consistent with the purposes of [NEPA] to delay operation at a stage where real environmental protection

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* Mere administrative difficulty and delay which may be caused by an injunction do not justify denying injunctive relief. The inconvenience defendants have caused themselves because of their violation of the law should not be a factor in determining whether the injunction should issue. Monroe County Conservation Council, Inc. v. Volpe, supra, 472 F.2d at 699; Environmental Defense Fund v. TVA, supra, 468 F.2d at 1175-76; Greene County Planning Board v. FPC, supra, 455 F.2d at 422-23; Calvert Cliffs' Coord. Com. v. AEC, supra, 449 F.2d at 1115, 1122, 1128; City of New York v. United States, 337 F.Supp. 150, 158 (E.D.N.Y. 1972) (three-judge court).

may come about than at a stage where corrective action may be so costly as to be impossible."); Calvert Cliffs' Coord. Com., supra, 449 F.2d at 1128; Northside Tenants' Rights Coalition v. Volpe, 346 F. Supp. 244, 249 (E.D. Wisc. 1972).

Similarly, in Arlington Coalition on Transportation v. Volpe, 458 F.2d 1323 (4th Cir.), cert. denied, 409 U.S. 1000 (1972), involving an action to halt construction of an interstate highway for substantive NEPA violations, the court noted that if an injunction did not issue the further investment of resources would make alteration of the project in the future much more unwise. The injunction was granted because the highway was not so near completion that "the costs of altering or abandoning the proposed route would certainly outweigh the benefits that might accrue therefrom to the general public." Id. at 1329-30 (emphasis in original).

The very point argued by defendants here -- that some decisions have permitted construction on a project to continue while the EIS is complied with -- indicates why in this case an injunction should issue now. Invariably, in these decisions the construction of the project is so near completion that any damage to the environment has already occurred. Therefore, obviously, the costs of termination greatly outweigh the benefits to the environment by

enjoining completion.* But this is not the case here. As was found by the Magistrate, and was adopted by the district court below as a finding of fact (and therefore cannot be set aside unless clearly erroneous), the construction of the bridge substructure contract was only three percent complete, and the ecology of Chautauqua Lake could be adversely affected by further construction of the bridge.** Defendants concede that only where "very little additional damage will occur" should no injunction issue where the EIS has not been filed. Intervenors' Brief at page 16. A factual finding that substantial damage could still occur has been made below. Defendants have thus conceded their case.

If an injunction did not issue now, in the passage of time before a final determination of the issues on

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* For example, in Environmental Defense Fund, Inc. v. Froehlke, 477 F.2d 1033 (8th Cir. 1973), involving the construction of a dam, the injunction was only partially granted. The court permitted certain construction activities to continue because of a finding that the activities would have "insignificant environmental impact" and that "substantial additional costs" would be incurred to terminate. In Greene County Planning Board, supra, this court refused to halt construction of certain high voltage transmission lines because construction was "so far advanced", and there was no "significant potential for subversion of the substantitive policies expressed in NEPA. . . ." 455 F.2d at 425.

** Only five test pilings have been installed out of approximately 250, and approximately $4.7 million has been spent out of an estimated $29 million necessary for completion.

the merits the construction would become so near completion that the rule of the cases cited by defendant would become applicable. It would then be impossible to stop the work or alter it so that the environment would not be affected. This is always the situation in cases of this nature. Continuing work on a project, as a practical matter, makes alternatives which might be less damaging to the environment impossible to consider. The course urged upon the Court by defendants only leads to the point where an injunction becomes useless, a point that already existed in the cases relied upon by defendants. Whatever plaintiffs are entitled to, they must receive now in cases of this nature. See, Environmental Defense Fund, Inc. v. Froehlke, 477 F.2d 1033, 1037 (8th Cir. 1973); Environmental Defense Fund, Inc. v. TVA, 468 F.2d 1164, 1183-84 (6th Cir. 1972); Lathan v. Volpe, 455 F.2d 1111, 1117 (9th Cir. 1971).

Many of the cases cited in Intervenors' Brief, rather than support defendants' arguments, add weight to the arguments made herein. For example, in Sierra Club v. Mason, 365 F. Supp. 47 (D. Conn. 1973) (cited at page 9 of the Intervenors' Brief), the court considered whether to issue an injunction requiring defendants to abide by certain assurances they had already made in an earlier EIS. The issue was not whether an injunction should issue barring further construction until an EIS was filed. In fact,

the court had issued a preliminary injunction barring continuation of a dredging project until NEPA was complied with. See Sierra Club v. Mason, 351 F. Supp. 419 (D. Conn. 1972).

Similarly, in Environmental Defense Fund, Inc. v. Armstrong, 352 F. Supp. 50 (N. D. Cal. 1972), aff'd, 487 F.2d 814 (9th Cir. 1973) (cited at page 10 of the Intervenors' Brief), the issue was whether the EIS was sufficient as filed. The court discussed the requirements for granting a preliminary injunction. The Intervenors' Brief at pages 10 and 11 sets out this discussion in full. Nothing in that discussion is contrary to what has been developed here, but more importantly, the case itself is authority for plaintiffs' position because the actual construction of the project was enjoined while the statement was supplemented. 352 F. Supp. at 56.

Finally, it should be stressed that an additional purpose of injunctive relief is to assure that federal agencies comply with NEPA. If injunctive relief is not granted where there are substantive violations of NEPA and some harm to the environment could be avoided, government agencies may have little incentive to comply with the mandates of NEPA. Injunctive relief, in fact, may be the only tool to effect meaningful compliance with NEPA.

B. Likelihood of Success

By conceding that an EIS was not prepared,* defendants have also conceded that plaintiffs would succeed on the merits of their claim--that defendants have violated NEPA. The Magistrate's report to the district judge below correctly noted that

> "As has been stated by the attorneys for the parties, the issue in this lawsuit is not whether the bridge should be built, but instead, whether there has been proper compliance with the procedural requirements of NEPA." Magistrate's Report, Civ. 1973-576 at p. 27.

The answer to this question, based on the law and defendants' concessions, is clearly no.** Thus, plaintiffs have demonstrated likelihood of success on the merits.

Plaintiffs have demonstrated irreparable injury and likelihood of success on the merits. Therefore, the District Court was correct in granting an injunction.

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* See Judge Curtin's opinion at 18 and defendant-appellant Schuler's brief at 17.

** Magistrate Maxwell found that

> "[T]here is nothing in the record of this hearing to indicate that the required Federal interagency consultation relative to environmental impact was had or that the other requirements of Section 102(C) were met." Magistrate's Report at 24-25.

C. Defendants Other Arguments

1. Reliance of Private Parties. Reliance by private parties on possible federal action should be of no legal effect, particularly where the federal action violates the law. Thus, Judge Curtin correctly refused to give weight to reliance of private parties.

In considering NEPA, Congress was keenly aware of possible economic dislocation which it might cause, yet it made no exceptions to the statute for cases where private parties have relied on government action. Clearly Congress decided that the dangers of ignoring the environment were greater than the dangers of economic dislocation from enforcement of the Act. See I-291 Why? Association v. Burns, supra, 372 F. Supp. at 264. In making this decision, Congress realized that private expenditure would occur in every case involving NEPA violations since invariably construction contracts are let by the time the case gets to court. Thus, by considering this reliance courts would, in effect, be forced to deny injunctive relief in each case, thereby emasculating the strong mandate of NEPA to consider environmental values.

The analysis of the function of NEPA and particularly the EIS, supra, clearly demonstrate that reliance of private parties in illegal federal action* should have no

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* Furthermore, as noted in appellees' brief, the reliance was on action taken prior to P.S.&E. approval and therefore prior to the time the federal government was even committed to the project.

weight in determining whether an injunction should issue.

2. Counsel for intervenors argues in its brief (page 12) that there is nothing in the record to suggest that defendants or any agencies involved proceeded "without clean hands and good motives". Assuming, for argument, that this is so, the plain fact of the matter is that defendants violated the law and should not be rewarded by being permitted to continue construction on the project.

3. The total highway project should not be examined in determining whether an injunction should issue. This is the law in this circuit as established in Monroe County Conservation Council Inc. v. Volpe, 472 F.2d 693, 698-99 (2d Cir. 1972).

II. The Defense of Laches Should Not Be Available in Actions of This Nature

The defense of laches should not be available in an action to enjoin non-compliance with NEPA. The nature of the plaintiffs in environmental litigation, the statutory duties of defendants, and the interests at stake differentiate environmental suits from ordinary suits between private parties and militate against barring a suit, and thereby barring enforcement of the Act, solely because of laches.

A. The Plaintiffs

In this case, as in many environmental cases, plaintiffs are a loose, ad hoc coalition of groups and individuals having a variety of interests in preservation of part of the environment. As Chief Judge Blumenfeld stated in I-291 Why? Association v. Burns, supra,

> "With few exceptions environmental action groups--especially those such as plaintiff organized in ad hoc response to a particular project--lack the resources affording access to legal advice in advance of a decision to litigate. The interests of the members of such groups are generally inchoate and decentralized until action is galvanized and funds are mobilized by some startling disclosure which awakens the public to the possibly dire consequences of an imminent intrusion on the environment. Yet dozens of cases have demonstrated that absent the advocacy of such groups, the procedural rights and protections enshrined in NEPA stand in jeopardy of being ignored with impunity." 372 F. Supp. at 237.

Plaintiffs in environmental litigation are generally laymen who lack knowledge of the legal niceties of when suit must be brought. As the instant action shows, federal approval of grants for major projects involves a complicated process. Because of the difficulties for laymen in bringing environmental suits and the complexities inherent in federal approval of projects, the defense of laches should be completely eliminated in environmental suits.

Environmental plaintiffs should not be required to bring suit hastily because they are entitled to presume

that federal agencies will carry out their obligations under NEPA. Environmental Defense Fund, Inc. v. TVA, 468 F.2d 1164, 1182 (6th Cir. 1972); I-291 Why? Association v. Burns, supra, 372 F. Supp. at 236-37. NEPA places the primary duty of enforcement on the federal agencies, and citizens acting as private attorney-generals should not be faulted when they mistakenly presume that the agencies will fulfill this duty.

B. The Defendants

The duties of defendants also militate against applying the defense of laches in environmental cases. As section 101(b) of NEPA, 42 U.S.C. § 4331(b) states explicitly, federal agencies have a "continuing responsibility" to consider the environment. See I-291 Why? Association v. Burns, supra, 372 F. Supp. at 237. Although in a given case plaintiffs' delay may, as a practical matter, have made it impossible to rectify environmental damage already done, it should in no way free defendants from their "continuing responsibility" to protect the environment. Cf. Cape May County Chapter, Inc., Izaak Walton League v. Macchia, 329 F. Supp. 504, 515 (D. N. J. 1971). If this Court recognizes the defense of laches, it will, in effect, be rewriting the statute to provide that under certain circumstances an agency's duties under NEPA cease, whereas the statute clearly provides the contrary.

To establish the laches defense, defendants have pleaded prejudice in the form of financial losses to the State and to private parties. However, these interests are insubstantial when weighed against other more important interests defendants should protect. Indeed, the federal and state defendants have no interest independent of the public interest. NEPA was intended to ensure that federal agencies would consider the environment as a vital part of the public interest. Plaintiffs' suit seeks only to vindicate the public interest by requiring defendants to determine, in compiling an EIS, whether ecological factors mandate changes in the proposed project. The public will not be prejudiced, and therefore defendants are not prejudiced, by having defendants weigh environmental factors with other social considerations in the agency's decision-making process. Indeed, Congress enacted NEPA because it determined that it <u>was</u> in the public interest for agencies to weigh ecological factors.

In this action, defendants have filed no EIS and therefore the project as currently planned may cause serious ecological harm which could be avoided. Defendants' failure even to mention this possible prejudice to the public demonstrates how shallow is their understanding of the importance of the environment and of the Congressional mandate in NEPA. In short, laches is not a defense because the public suffers no prejudice from enjoining substantive violations of NEPA.

Certainly, the delay of private parties in trying to vindicate the public interest should not prevent the courts from forcing governmental agencies to observe their statutory duties.

C. The Interests at Stake

Finally, the nature of the action should prevent application of the defense of laches in an environmental case. In Arlington Coalition on Transportation v. Volpe, 332 F. Supp. 1218 (E. D. Va. 1971), rev'd, 458 F.2d 1323 (4th Cir.), cert. denied, 409 U. S. 1000 (1972), the Court of Appeals conceded that prior to the suit defendants had already made a substantial commitment to the project and that plaintiffs could have sued 13 1/2 months earlier than they did. However, the court refused to invoke laches "because of the public interest status accorded ecology preservation by the Congress." 458 F.2d at 1329. See also First National Bank of Chicago v. Richardson, 484 F.2d 1369, 1372 (7th Cir. 1973); Environmental Defense Fund, Inc. v. TVA, 468 F.2d 1164, 1182-83 (6th Cir. 1972); I-291 Why? Association v. Burns, 372 F. Supp. 223, 237 (D. Conn. 1974); Life of the Land v. Volpe, 363 F. Supp. 1171, 1176 n. 20 (D. Haw. 1972); aff'd sub. nom. Life of the Land v. Brinegar, 485 F.2d 460 (9th Cir.), stay and injunction entered by Mr. Justice Douglas vacated, 414 U. S. 1052 (1973); Ward v.

Ackroyd, 344 F. Supp. 1202, 1212-13 (D. Md. 1972).

Cases which have sustained the laches defense have done so without considering the public policy implications of so doing.* We urge this Court to adopt the rule stated by former Chief Judge Friendly in City of New York v. United States, 337 F. Supp. 150, 160 (E.D.N.Y. 1972) (three-judge court):

> "The tardiness of the parties in raising the issue cannot excuse non-compliance with NEPA; primary responsibility under the Act rests with the agency."

Accord, Jones v. Lynn, 477 F.2d 885, 892 (1st Cir. 1973); Environmental Defense Fund, Inc. v. TVA, 468 F.2d 1168, 1182-83 (6th Cir. 1972); I-291 Why? Association v. Burns, 372 F. Supp. 223, 240 (D. Conn. 1974).

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* Although several courts have indicated that laches may be a defense in an environmental suit, in most of these cases the court simply assumed without discussion that the doctrine applied and then found the defense not sustainable under the facts of the given case. It is quite possible that denial of an injunction in those cases which have sustained the defense of laches can be justified on grounds discussed in part I of our brief, supra. In each such case it appears that most of the work in the project was already completed and that most environmental harm had already been done. However, dismissal for laches has certain detrimental effects not incurred by staying or temporarily denying an injunction. A case dismissed for laches does not reach the merits and thus never reaches the question of whether substantial environmental harm might still be avoided by making changes in future work. Moreover, dismissal for laches prevents review of the adequacy of the EIS (or, as in this case, obviates the need for writing one at all), which encourages federal agencies to continue to shirk their duties under NEPA.

CONCLUSION

For the reasons stated above, the decision and order entered by Judge Curtin in the United States District Court for the Western District of New York preliminarily enjoining defendants from continuing construction of the bridge over Chautauqua Lake should be affirmed.

Dated: New York, New York
September 26, 1974

Respectfully submitted,

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STATE OF NEW YORK)
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JOSEPH H. SCHNABEL, being duly sworn, deposes and says that:

He is an attorney associated with Debevoise, Plimpton, Lyons & Gates, the attorneys for the amicus curiae.

On September 27, 1974, he served the within amicus brief upon the attorneys listed below by depositing true copies of the same securely enclosed (two copies in each) in postpaid wrappers in an official depository maintained and exclusively controlled by the United States Postal Service within the State of New York, directed to said attorneys at the addresses set forth below:

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DOROTHY DOSTER
NOTARY PUBLIC, State of New York
No. 31-1002947
Qualified in New York County
Commission Expires March 30, 1975

Sworn to before me this
27th day of September, 1974.

Dorothy Doster